EXHIBIT A.

Affidavit of Carla A. Hills.

In the United States District Court, for the District of Columbia.

Myrna Underwood, et al. Plaintiffs, v. Carla A. Hills, et al. Defendants. Civil Action No. 76-0469.

Carla A. Hills, being duly sworn, deposes and says:

1. I am the Secretary of the Department of Housing and Urban Development. All of the functions, powers and duties of the Department, including those powers conferred by Section 236 of the National Housing Act, as amended, are vested in the Secretary, 12 U.S.C. 1702.

2. It is the purpose of this affidavit to inform the Court of the most current data available with respect to the information set forth in paragraphs 4 and 5 of my affidavit previously submitted in this case.

3. As of February 29, 1976, the Department had an unreserved balance of contract authority in an amount aggregating $48.1 million for contracts authorized by Section 236 of the National Housing Act, as amended. However, this total includes $8.3 million in program reservations which had been made but not formally recorded on the Department's accounting records. Therefore, as a realistic matter, the Department had available Section 236 contract authority aggregating only $39.8 million on that date.

4. The Department has allocated this $39.8 million unreserved balance of Section 236 contract authority in the following manner:

a) $15.9 million in contract authority for bona fide commitments to State-aided Section 236 projects.

b) $5.0 million in contract authority for bona fide commitments to non-State-aided Section 236 projects.

c) $3.1 million in contract authority to amend contracts for interest reduction payments on State-aided Section 236 projects.

d) $3.2 million in contract authority to amend contracts for interest reduction payments on non-State-aided Section 236 projects.

e) $5.8 million in contract authority for deep subsidy payments for Section 236 projects pursuant to Section 236(f)(2) of the National Housing Act, as amended.

(f) $6.8 million in contract authority for deep subsidy payments to Section 236 projects which had received a commitment by the Department for interest reduction payments prior to August 22, 1974, but which were not finally endorsed nor receiving interest reduction payments until after that date.

/s/ Carla A. Hills
CARLA A. HILLS
Secretary

Subscribed and sworn to before me on this 7th day of May, 1976.

/s/ Bernard E. Banks
NOTARY PUBLIC
My Commission Expires June 30, 1976

EXHIBIT B.

Department of Housing and Urban Development—Independent Agencies Appropriations for 1977.

Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, Ninety-Fourth Congress, Second Session.

Subcommittee on HUD—Independent Agencies, Edward P. Boland, Massachusetts, *Chairman.*

Joe L. Evins, Tennessee
George E. Shipley, Illinois
J. Edward Roush, Indiana
Bob Traxler, Michigan
Max Baucus, Montana
Louis Stokes, Ohio
Yvonne Brathwaite Burke, California
Burt L. Talcott, California
Joseph M. McDade, Pennsylvania
C. W. Bill Young, Florida

G. Homer Skarin, Richard N. Malow, and Paul E. Thomson, *Staff Assistants.*

Part 6, Department of Housing and Urban Development.

Printed for the use of the Committee on Appropriations.

Department of Housing and Urban Development—Independent Agencies Appropriations for Fiscal Year 1977.

Tuesday, March 30, 1976.

Department of Housing and Urban Development Testimony of the Secretary.

. . . .

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING PRODUCTION AND MORTGAGE CREDIT
FEDERAL HOUSING ADMINISTRATION

RENTAL HOUSING ASSISTANCE PROGRAM
(Section 236)

PROGRAM HIGHLIGHTS

	ACTUAL 1975	BUDGET ESTIMATE 1976	CURRENT ESTIMATE 1976	ESTIMATE 1977	INCREASE + DECREASE - 1977 vs 1976
			(Dollars in thousands)		
Contract Authority:					
Receipts from one-year subsidies	...	...	$23	$68	+$45
Used	$56,336	$73,163	102,049	13,272	-88,777
Unused balance	$25,036	...	23,000	...	-23,000
Budget Authority:					
Recoveries	...	...	23	68	+45
Obligated (net)	2,259,552	2,936,520	4,071,376	520,272	-3,551,104
Lapse	903	...	9,700	...	-9,700
Unobligated balance	5,001,053	...	920,000	...	-920,000
Number of Units Reserved	22,614	32,500	30,000	...	-30,000
Units Started	19,421	40,000	60,000	20,000	-40,000
Unit Occupancy (End of period)	400,360	508,000	459,000	555,000	+96,000

SUMMARY OF BUDGET ESTIMATES

1. SUMMARY OF BUDGET REQUEST

No additional contract authority is required in this program. The anticipated use of the balance of Section 236 funds currently available is as follows:

	ACTUAL 1975	ESTIMATE 1976	TRANSITION QUARTER	ESTIMATE 1977
		(Dollars in Thousands)		
Bona fide commitments	$56,313	$65,000	...	...
Prog subsidy	...	30,000	$10,000	$10,000
Amendments to prior contracts	...	6,777	...	3,000
Subsidy for taxes and utilities	23	272	68	272
Total	56,336	102,049	10,068	13,272

E-5

[beginning of p. 352 of original text]

Rental Housing Assistance Program

The reservation of funds for bona fide commitments will be completed in 1976 with the funding of an estimated 30,000 units. The new deep subsidy program implemented in 1976, will assist approximately 25,000 units.

The Housing and Community Development Act of 1974 authorized a program of subsidies for taxes and utilities which has not been implemented since other more equitable means of assisting all insured projects—not just Section 236—were being developed. Assistance to projects in financial difficulty will be provided through the Section 8 program.

The tax and utility subsidy program currently is the subject of litigation. As a result of several cases which already have had preliminary and final orders issued, the Department currently is estimating a requirement for about $272 thousand annually for such subsidies.

2. *CHANGES FORM ORIGINAL 1976 BUDGET ESTIMATES*

Both the original and current 1976 estimates propose funding of the remaining bona fide units, amendments to previously approved projects, and implementation of the deep subsidy program.

Although the number of units processed in 1975 roughly equalled the budget forecast, *the cancellation or non-approval of projects proven infeasible has substantially reduced the number of projects which actually received funding. This shortfall in usage resulted in an unobligated balance carrying over into 1976.* [Emphasis added.]

The savings which resulted from such actions in 1975 will be offset to some extent, by the cost of the deep subsidy program. Field surveys have indicated a significantly greater number of units eligible for conversion to the deep subsidy program, and higher per unit costs. The estimate for this category has been increased accordingly. *The increment in deep subsidy requirements in 1976 will not totally use up the 1975 shortfall, however, and an unobligated balance of $23 million is anticipated at the end of 1976.* [Emphasis added.] This balance will be fully utilized during the Transaction Quarter and 1977.

EXPLANATION OF INCREASES AND DECREASES

Decreases in the use of contract and budget authority and in the levels of unit reservations and construction starts reflect the completion of activity under the Section 236 program. By the end of 1976, all units will have been allocated fund reservations, eligible units will have received a major portion of the initial year funding under deep subsidy, and virtually all projects will have reached the stage of construction start. Activity in 1977 will be limited to second year — deep subsidy funding, amendments to prior contracts and such operating subsidies for taxes and utilities as may be required.

PROGRAM DESCRIPTION—DEEP SUBSIDY PROGRAM

Under the original Section 235 program, the only subsidy available was for the purpose of mortgage interest reduction payments. The maximum subsidy available to a project was set at the difference between the monthly payment for principal, interest, and mortgage insurance premium on the outstanding. . . .

EXHIBIT C.

U.S. Department of Housing and Urban Development
Housing

Transmittal

1. *This Transmits the Following:*

   Handbook ..... Operating Subsidy Handbook dated .....

2. *Explanatic ı of Material Transmitted:*

   Provides instructions for computing operating subsidies pursuant to the court order in the case *Underwood v. Hills* which compels the Department to pay operating subsidies in accordance with Section 212(2) of the Housing and Community Development Act of 1974. Provisions for retroactive payments of operating subsidies are included for those cases where HUD is required to make retroactive payments by court order. Form HUD-9816 is being initiated to allow for computation and proper assignments to tenants of operating subsidies.

   [end of cover page of original text]

[5.] . . .

d. *Changes in Baseline.* Except as discussed in paragraph 5(b), a Baseline, once established, remains unchanged over the life of a project unless, subsequent to its establishment, a project-paid utility is passed on to tenants or, in rare cases, a tenant-paid utility is passed back to the project. In such cases, a revised Baseline is established using the procedure discussed in paragraph 8.

6. *DETERMINING TAX AND UTILITY COSTS INCLUDED IN LAST HUD-APPROVED RENT*

INCREASE. This data is drawn from Column D of the Form HUD-92547 used in computing the last HUD-approved Rental Schedule Form HUD-92458 (see example in Appendix 1). This determination is not necessary on projects which have not had a rent increase subsequent to sustaining occupancy.

a. *Effect of Future Rent Increases.* Whenever a rent increase is approved by HUD subsequent to a project's becoming eligible for an operating subsidy, tax and utility cost data must be drawn from Column D of the Form HUD-92547 used in computing the rent increase. This data will be used, along with the Baseline data, to establish the Maximum Operating Subsidy (PUPM) applicable to the new rent increase.

7. *DETERMINING MAXIMUM OPERATING SUBSIDY (PUPM)* Once the Baseline and the tax and utilities costs included in the last HUD-approved rental schedule have been established, the Maximum Operating Subsidy (PUPM) is determined as follows:

a. *Formula.* Any increase in the cost of taxes and utilities from the Baseline to the last HUD-approved rent increase must be divided by the product of the number of units at the project times 12 months to arrive at an average per unit per month (PUPM) amount as follows:

[end of p. 9 of original text]

Increase
units x 12 — Maximum Operating Subsidy (PUPM)

The format shown in Appendix 2 is used in making this computation.

b. *Example.* Project "A" reached sustaining occupancy on January 1, 1974, and was processed for a $12 average PUPM rent increase on December 1, 1975. The local office compares the costs of property taxes and utilities payable by the owner for January 1, 1974, and December 1, 1975, as shown in Appendix 1. Using the above formula, the Maximum Operating Subsidy (PUPM) is computed as $4.38.

c. *New Maximum Operating Subsidy (PUPM).* For any project eligible for an operating subsidy, a new Maximum Operating Subsidy (PUPM) must be established when either the Baseline or tax and utility costs included in the last HUD-approved rent increase are changed. This will occur whenever:

(1) A rent increase (or decrease) is approved, resulting in new tax and utility costs included in last HUD-approved rent increase.

(2) A project-paid utility is passed on to tenants, resulting in a revised Baseline.

(3) A tenant-paid utility is passed on to the project, resulting in a revised Baseline.

8. *PERSONAL BENEFIT EXPENSE (PBE).* Personal Benefit Expense (PBE) is a utility allowance that is not included in the rent paid to the housing owner since tenants pay the utility bills directly to the utility company. The requirements for establishment of a PBE are contained in a Final Rule, 236.55, published in Volume 41, Number 190, of the Federal Register, dated September 29, 1976.

In the event a PBE allowance is approved for a project, the following procedures should be taken into consideration.

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. . .

for an operating subsidy if the amount paid towards basic rent exceeds that tenant's Income Qualification Level. The actual operating subsidy payable for each tenant is dependent upon the tenant's Income Qualification Level and liability for basic rent in the absence of operating subsidy and can range from 1¢ to the Maximum Operating Subsidy (PUPM) applicable to the project in which he or she resides. In no case may the actual operating subsidy exceed the Maximum Operating Subsidy (PUPM). Tenants paying in excess of basic rent are not eligible for operating subsidies because Section 236(f)(3) of the Act specifies that operating subsidies are applicable to basic rent tenants.

b. *Specific Criteria.* Form HUD-9816 and complete instructions for determining if tenants are qualified for operating subsidies and the amount of subsidy payable on their behalf is provided in Appendix 5. The adjusted monthly income as shown on the current FHA Form 3131 or FHA Form 3132 is entered in Column 6 for each tenant in residence during the billing month. Amounts in Column 6 are multiplied by the Income Percentage Factor (entered in the heading of Column 7) to compute the Income Qualification Level for each tenant (entered in Column 7). The operating subsidy pay-

able on behalf of qualified tenants (those for which the amount in Column 11 exceeds the amount in Column 7) is entered in Column 14 and will be the lesser of:

(1) The Maximum Operating Subsidy (PUPM) (Column 8).

(2) The net rent increase payable by the tenant (Column 12 minus Column 13).

(3) An amount necessary to reduce the rent payable by the tenant to the amount of the Income Qualification Level (Column 11 minus Column 7).

[end of p. 14 of original text]

EXHIBIT D.

Affidavit of James J. Tahash.

United States District Court, for the District of Columbia.

Myrna Underwood, et al. Plaintiffs v. Carla A. Hills, et al. Defendants. Civil Action No. 76-649.

James J. Tahash, being duly sworn, deposes and says:

1. I am the Director of the Insured Project Mortgage Division of the Office of Loan Management, Department of Housing and Urban Development (HUD). My responsibilities as Director include the development and recommendation of policies and establishment of operating plans and procedures for the payment of operating subsidies pursuant to Section 236(f)(3) and (g) of the National Housing Act, as amended (12 U.S.C. 1715z-1(f)(3) and (g)). The information set forth in this affidavit is based upon my personal knowledge and information supplied to me by members of my staff.

2. The purpose of this affidavit is to inform the Court of the steps which must be taken to implement the operating subsidy program pursuant to the Court's Order of June 8, 1976, and to furnish our best estimate of the time and cost involved in taking those steps. This affidavit is submitted in support of the Government's application for a stay, and will demonstrate why a stay is needed. The Order directs the Secretary of HUD to:

> a) determine the initial operating expense level for all housing projects in the United States assisted under Section 236;

b) determine whether the increase in the cost of utilities and local property taxes for each of the housing projects has been reasonable and comparable to cost increases affecting other rental projects in the relevant community; and

. . . .

15. Based on our estimate that tenants in 58 percent (232,000) of the 400,000 units will qualify for an operating subsidy and that the median maximum per unit per month subsidy for all projects will be $15.43 based on projections for FY 1976, we estimate that the gross maximum subsidy payable per month for all projects during the retroactive period will amount to $3,579,760. The balance in the Section 236(g) reserve fund available to pay operating subsidies after deducting $18 million needed to repay project owners for overpayments into the reserve fund is $28 million. At the above monthly rate, the $28 million would be adequate to make 7 of the 16 months of the retroactive payment period prescribed by the Court.

16. The estimated personnel costs for the retroactive implementation are based on effective costs per man-year of $9,000 for project owner staff and $16,500 for HUD staff. It is estimated the HUD staff costs of retroactively implementing the program will be $650,-100 and the project owner staff costs will be $803,700, thus bringing the total cost and time of retroactively implementing the program to $1,453,800 and 127.8 man-years.

17. The retroactive implementation will have an adverse effect on projects. Since the $803,700 in additional project staff costs will be included in allowable operating expenses in future rent increase computations, rents for these projects can be expected to increase

a minimum of $2.38 per year *solely* as the result of increased staff costs relative to the retroactive implementation of the operating subsidy program. Rents can be expected to increase even more as the result of yet unquantified increases in other administrative costs such as bookkeeping and computer costs. It should be noted that because of a factor used in the rental computation to adjust for normal vacancy losses and management fees, a $1.00 increase in allowable expenses actually produces an increase in basic rents of about $1.18.

18. Since the $15.43 maximum per unit per month operating projection mentioned in paragraph 15, *supra,* is a median figure, it is anticipated that in projects where a number of tenants receive operating subsidies substantially below this amount, the necessary increase in administrative costs will result in a rent increase which will *exceed* any benefits received from operating subsidies. Additionally, such administrative expenses will result in rent increases to all tenants, not just those benefiting from operating subsidies.

19. The above estimates of time and cost give a picture of the massive effort and cost which it will take to implement the operating subsidy program. Additional information relating to the costs of preparing and implementing the HUD training programs and the Notice and Handbook preparation and clearance is being prepared by this office to supplement this affidavit and will be submitted as soon as it is available.

/s/ James J. Tahash
JAMES J. TAHASH, DIRECTOR OF THE INSURED PROJECT MORTGAGE DIVISION, OFFICE OF LOAN MANAGEMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subscribed and sworn to before me on this 17th day of June, 1976.

/s/ Bernard G. Banks
NOTARY PUBLIC

My Commission Expires June 30, 1976